IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5526 OF 1995

Shri Nageshwar Basantram Dubey
Occupation-Medical profession
(Ayurved) R/o opposite Marathi
School, Village Pisawali, Kalyan
Dist. Thane ..Petitioner

V/s

1. The Union of India.

2. The Indian Medicines
Central Council

3. The State of Maharashtra

4. The Maharashtra Council of
Indian Medicine.

5. The Commissioner of Police
Thane.

6. The Inspector of Police
MIDC, Manpada Police Station,
Dombivali, Tal. Kalyan, Dist.Thane. ..Respondents.

Shri Kirit J. Hakani for Petitioner.
Shri Rajeev Chavan with Shri D.A.Dubey for Respondent Nos.1 and 2.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos.3,5 and 7.

WITH

WRIT PETITION NO. 1388 OF 1996
WITH
CIVIL APPLICATION NO. 118 OF 2003.

1. Shree Dhanvantari Rashtrabhasha Evam
Ayurved Prachar Samiti, Mumbai (Regd.)
havign its office at Dhanvantari Nivas,
Opp. Shiv Temple, Indira Nagar, Rani Sati
Marg, Malad (E) Bombay-97.

2. Ramesh Madhavlal Upadhyay
   President of Petitioner No.1. Committee.

3. Achhelal Vishwanath Yadav
   Secretary of Petiioner
   No.1 Committee. ..Petitioners.

V/s

1. The State of Maharashtra.

2. The Director Genralof Health Service
   Government of Maharashtra, Bombay

3. Union of India.

4. Director of Central Council of
   Indian Medicine.
   Central Council ..Respondents.

Shri Dhananjay Halwai h/for Shri M.P.Vashi i/b M.P.Vashi and Associates for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1 and 2.
Shri Rajeev Chavan with Shri D.A.Dubey for Respondent No.3.

WITH

WRIT PETITION NO. 4341 OF 1996

1. Dharmaraj Kashinath Chauhan

2. Rajendra Prasad Motilal Yadav

3. Prakash Kalappa Patil

4. Subhash Prasad Maurya,

5. Rajmal Shripal Yadav

6. Dayaram Baiju Yadav

7. Ramrathi Bideshi Yadav ..Petitioners.

V/s

1. The State of Maharashtra.

2. The Director Genral of Health Service
   Government of Maharashtra, Bombay

3. Union of India.

4. Director of Central Council of
   Indian Medicine.
   Central Council ..Respondents.

Shri Dhananjay Halwai h/for M.P.Vashi for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur,A.G.P. for Respondent Nos.1 and 2.
Shri Rajeev Chavan with D.A.Dubey for the Union of India.

WITH

WRIT PETITION NO. 7648 OF 2000
WITH
CIVIL APPLICATION NO.1676 OF 2006

1. Ayurvedic Enlisted Doctor’s
   Association, Mumbai. ..Petitioners.

V/s

1. The State of Maharashtra.

2. Maharashtra Council of
   Indian Medicine. ..Respondents.

Shri R.S.Apte for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1.
Shri R.A.Rodrigues for Respondent no.2.

WITH

WRIT PETITION NO. 1579 OF 2002

1. Ayruved Sanatak Sangh, Maharashtra ..Petitioner

V/s

1. The State of Maharashtra.

2. The Director Genral of Health Service
Government of Maharashtra, Bombay ..Respondents.

Shri P.M.Havnur for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1 and 2.

WITH

WRIT PETITION NO. 2575 OF 2003.

1. Parasram Chamurulal Bhimte.
2. Shyamlal Dhondu Meshram
3. Nareshlal Sadashiv Uke
4. Pawan Arjundas Gaidhane.
5. Janardhan Dhonduji Bhelave
6. Sadashiv Dhonduji Kade
7. Budhram Lakhaji Gaidhane
8. Ku. Mangala Sadashiv Kade,
9. Purshottam Govinda Meshram
10. Gajanan Hiralal Mankar.
11. Bhagwan Singh Mangal Singh Parihar
12. Vidhyalal Hiralal Rahangdale
13. Ashok Insaram Agare.
14, Rajesh Dulichand Ingale.
15. Anandrao Bhaiyalal Bijewar
16. Ganesh Devlal Koche

V/s

1. The State of Maharashtra
2. Hindi Sahitya Sammelan
Hindi Vishwa Vidhyala Prayag
Allahabad.
3. State Council of Ayurvedic
And Unani Medicine Bihar.
4. Madhya Pradesh Ayurvedic Unani
and Prakritik Chikitsa Board (M.P.)
5. Maharashtra Council of Indian Medicines
6. Central Concil of Indian Medicine.
7. Superintendent of Police Gondia
Dist.Gondia. .. Respondents.

Shri N.N.Notghare for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1,4 and 6.

WITH
WRIT PETITION NO. 9160 OF 2003

1. Dattatraya Rangarao More ..Petitioner.

V/s
1. The State of Maharashtra.
2. Maharashtra Council of Medicine
3. Office of Sr. Inspector of Police
   Econimic Office Wing
   GBCIO. Mumbai ..Respondents.

Shri N.D.Hombalkar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO. 9162 OF 2003

1. Dipak Laxman Amte ..Petitioner.

V/s
1. The State of Maharashtra.
2. Registrar of Maharashtra Council of Medicine
3. Office of Sr. Inspector of Police
   Econimic Office Wing
   GBCIO. Mumbai ..Respondents.

Shri N.D.Hombalkar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 9178 OF 2003

1. Gullappa Chinnappa Kanthi ..Petitioner.

V/s
1. The State of Maharashtra.
2. Registrar of Maharashtra Council of Medicine
3. Office of Sr. Inspector of Police
   Econimic Office Wing

GBCIO. Mumbai ..Respondents.

Shri N.D.Hombalkar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 847 OF 2006

1. Guhaghar Gramin Vidyakiya
   Association

2. Madhukar Digamber Mestry
3. Shri Ramzan Abdul Mujavar
4. Shri Rahimtullah Yusuf Daryavardi
5. Shri Dilip Bhikaji Khair ..Petitioners.

V/s

1. The State of Maharashtra.
2. Maharashtra Council of Medicine
3. Director General of Health Services Respondents.

Shri R.G.Devrukhkar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 2025 OF 2006

1. Jaywant Akaram Suryawanshi
2. Sunil Vithal Suryawanshi
3. Shivaji Gangaram Kadam
4. Sudda Mallibrahma Reddy
5. Mohan Bhauso Mane
6. Anil Vithal Surayawanshi
7. Shivaji Jagannath Patil ..Petitioners.

V/s

1. The State of Maharashtra.
2. District Collector, Sangli
3. Superintendent of Police
   Sangli.
4. District Health Officer
   Z.P. Sangli
5. Maharashtra Council of Indian
   Medicine .. Respondents.

Shri Vijay Mane for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 3047 OF 2006

1. Rajiv Hanmant Tarapure
2. Amitkumar Ashok Patil
3. Baddiusman Parkar
4. Nashirhusain Bashirahmed Nadaf
5. Anil Kumar Baburao Bele
6. Pradipkumar Appaso Awale
7. Sanjay Sakaram Mohite
8. Jinpal Appaji Inge
9. Babaso Popat Jadhav
10. Saurendrakumar Sashikant Hakhambare
11. Mahesh Mallikarjun Gadve
12 Abhaykumar Parisa Hawale
13. Chandrashekhar Shamsunder Ekande
14. Sindip Shamsunder Ekande
15. Anil Ramchandra Patil
16. Vaishali Mahesh Gadve
17. Mrs. Shital Chandrashekhar Ekande
18. Mrs.Shubhangi Anil Patil
19. Mahesh Khasaba Mohite.
20. Umesh Ahsok Kumbhar ..Petitioners.

V/s

1. The State of Maharashtra.
2. Maharashtra Council of Medicine
3. Union of India. .. Respondents.

Shri Mihir Desai for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondents.

WITH
WRIT PETITION NO. 377 OF 2001

1. Janmejaimani Janardanmani Tripathi ..Petitioner

V/s

1. The Inspector-In-Charge
   Kalamboli Police Station.

2. Commissioenr of Police

3. Maharashtra Council of Indian
   Medicine
4. The Central Council of Indian Medicine.
5. The State of Maharashtra
6. Union of India. ..Respondents.

Shri Rajesh Datar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos. 1,2 &
5.
Shri Rajeev Chavan with Dubey for Respondent No.6.

WITH
WRIT PETITION NO. 5584 OF 2006

1. Jaypal Bharmappa Goture ..Petitioner
   V/s
1. Maharashtra Council of Indian
   Medicine
2. Block Development Officer,.
   Panchayat Samitee Gadhiglang
   Dist. Kolhapur. ..Respondents.

Shri V.S.Kapse for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondents.

WITH
WRIT PETITION NO. 6537 OF 2006

1. Mr. Madhukar Somanna Gannapa ..Petitioner
   V/s
1. Maharashtra Council of Indian
   Medicine
2. State of Maharashtra Respondents.

Shri T.D.Deshmukh for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondents.

WITH
ORIGINAL SIDE WRIT PETITION NO. 407 OF 1992

1. Dr. Tatoba Bayaji Patil
2. Dr. Vaidya Vishwanath Maruti Gaikwad
3. Mr. Sudam Ghaugule

4. Maharashtra Prantiya Vaidya Mandal ...Respondents.

V/s

1. Union of India.
2. Director, Central Council of Indian Medicine.
3. The Secretary, Ministry of Health and Public (Education) Welfare Dept. New Delhi.
4. The Secretary, Medcial Education of Food and Drugs, Office,Bombay.
5. The Secretary Home Deptt., Bombay.
6. The Registrar, Maharashtra Council of Indian Medicine.
7. Director of Health Services, Bombay.
8. The State of Maharashtra ..Respondents.

WITH

ORIGINAL SIDE WRIT PETITION NO. 3693 OF 1991

1. Vaidya Lalita Ramkewal Yadav
2. Vaidya ajaram Paljoo Prajapati
3. Vaidya Gomati Rampyare Prajapati
4. Vaidya Harishankar Sadhuram Mourya
5. Vaidya Dinesh Rajaram Yadav.
6. Vaidya Budhiram Dhunnuram Arya ..Petitioners.

V/s

1. Union of India.
2. Director, Central Council of Indian Medicine.
3. The Secretary, Ministry of Health and Public (Education) Welfare Dept. New Delhi.
4. Registrar Maharashtra Council of Indian
5. State of Maharashtra/
6. The Registrar, Patna Medical Council (Ayurvedic and Unani).
7. The Registrar Ayurvedic & Uniani Medcial Council Bhopal, M.P.
8. The Registrar, Ayurvedic & Unani Medcial Council Rajasthan
9. The Registrar Bhartiya Medcial Council, Lalbaug, Lacknow, U.P.
10. Pradhan Mantri HIndi Sahitya Sammellan, Prayag Allahabad, U.P.

7. Director of Health Services, Bombay.
8. The State of Maharashtra ..Respondents.

Mr. Mahabaleshwar N. Morje for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.P.M.Mokashi, A.G.P. for Respondent/State.
Shri Rajeev Chavan with D.A.Dubey i/b T.C.Kaushik for
Union of India.
Shri R.A.Rodrigues for Medical Council.

WITH
ORIGINAL SIDE WRIT PETITION NO.452 OF 2005

1. Akhil Bhartiya Association, Mumbai
2. Harischandra Vishwanath Jadhav
3. Indra Bahadur M. Patel
4. Samarbahadur Yadav ..Petitioners.

V/s
1. The State of Maharashtra.
2. Maharashtra Council of Indian Medicine
3. Director Genral of Health Services .. Respondents.

Mr.Raju Morey i/b R.S.Mishra for the PEtitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Shri P.M.Mokashi, A.G.P. for Respondent/State.
Shri Y.S.Bhate with N.D.Sharma for Union of India.
Shri R.A.Rodrigues for the Medical Council.

WITH
WRIT PETITION NO.7184 OF 1998

1. Vaidya Vishwanath Maruti Gaikwad
2. Vaidya Shri Sambhaji Laxman Methe
3. Vaidya Shri Babanrao Dhondiram Kadam
4. Vaidya Shri Rajaram Dhondiram Gole
5. Vaidya Shri Tanaji Balu Yadav
6. Vaidya Shri Narayan Appasaheb Patil
7. Vaidya Shri Sudhir Dinkar Marathe
8. Vaidya Shri Raghunath Anant Patil
9. Vaidya SHri Nagnath Narsingh Balsure
10. Vaidya SHri Suresh Shitaram Chavan
11. Vaidya Shri Lamuwel Daniel Sirsat
12. Vaidya Shri Makbul Gulab Mujawar
13. Vaidya Shri Sunil Govind Khatvkar
14. Vaidya SHri Nawab Babalal Galatgekar

15. Vaidya Shri Bhagwan Nana Gosavi
16. Vaidya SHri Makbul Rasul Mullani
17. Vaidya Shri Ashok AppasahebPatil
18. Vaidya Shri Shivaji Dhondiba Giri
19. Vaidya Shri Hidaytulla Abdul Kadar
20. Vaidya Shri Anandrao Shankar Giribuwa
21. Vaidya SHri Vishwanath Shankar Patil
22. Vaidya SHri Vilas Hari Patil
23. Vaidya Shri Raghunath Shivaji Kumbhar
24. Vaidya Shri Sambhaji Ganpati Pharakte
25. Vaidya Shri Anandrao Balvant Malvade
26. Vaidya SHri Ganpat Rao Desai
27. Vaidya SHri Mahadeo Yesaba Patil
28. Vaidya SHri Vaman Shantaram Karalkar
29. Vaidya Shri Jayant Anant Musale
30. Vaidya Shri Balvant Shankar Jadhav
31. Vaidya Shri Sadashiv Dnyanu Patil ...Petitioners.

V/s.

1. Union of India.
2. Director, Central Council of Indian Medicine.
3. The Secretary, Ministry of Health and Medical Education Dept. New Delhi.
4. The Secretary, Medical Education & Drugs
5. The Secretary, Home Department.
6. The Registrar, Maharashtra Council of Indian Medicine
7. Director of Health Services, Bombay.
8. The State of Maharashtra ..Respondents

Mr. Mahabaleshwar N. Morje for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur, A.G.P. for Respondent Nos.4,5,7 and 8.
Shri Rajeev Chavan with D.A.Dubey for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO.2104 OF 2006

1.Shri Govindrao Mahadev Powar
2.SHri Anand Laxman Gaikwad

3. Shri Henmant Krushna Bhiugade
4. Shri Jotiba Laxman Khamkar
5. Shri Baburao G. Patil
6. Shri Shivaji Laxman Kurade
7. Shri Uttam Pandurang Shenari
8. Shri Ganagaram Genba Barkade
9. Shri Babasaheb Bhiaji Rahinj
10. Shri Ashok Mallikarjun Lohar
11. Shri Deepak Balwant Changale
12. Shri Maruti Krushna Shingare
13. Shri Sadashiv Krushna Sawant
14. Shri Yuvraj Sambhaji Desai
15. Mahadev Bhairu Jadhav
16. Shankar Vishnu Patil
17. Shri Rajaram Shripati Khade
18. Shri Nigappa Dhondiba Kurale
19. Shri Joseph Mariyan Disoza (Soj)
20. Shri Bhujangrao Laxman Patil
21. Shri Jotiba Laxman Powar
22. Shri Vijay Nana Kumbhar
23. Shri Mahadev Gopal Parit
24. Shri Sachin Govind Powar
25. Shri Krushna B. Chaugule
26. Shri Vasant Dattatray Patil
27. Shri Suresh Mahadev Chile
28. Shri Shashikant Baburao Patil
29. Shri Maruti M. Kamble
30. Shri G.Y.Patil
31. Sardar Dastgir Mulla
32. Shri Suresh Laxman Powar
33. Shri Bhupal Nana Godhade
34. Shri Balasaheb Appayya Chinchewadi
35. Shri Shashikant Mallappa Mangole
36. Shri Baburao Nana Shinde
37. Shri Ananda Kallappa Chougule
38. Shri Arjun Balgonda Kanade
39.Shri Janardan Vikhambhar Kakade
40. Shri Balkrushna Ghansham
41. Shri Ramchandra Baburao Rajmane
42. Maruti Mahaling Badkar
43. Shri Sadashiv Ishwar Shingate
44. Shri Dudappa Shivling Gurav
45. Shri Babaji Laxman patil
46. Shri Laxman Ramchandra Mitake
47. Shri Nowappa Umanna Honoli
48. Shri Dattatray Krushna Murkate
49. Shri Rajendra Vitthal Jadhav

50. Shri Papalal Daval Chandekhan
51. Shri pandurang Nana Shinde
52. Shri Pandurang Tukaram Shetge
53. Leu Deu Sawant
54. Shri Uttam Shankar Pundpal
55. Shri Pramod Ishwar Kamble
56. Shri Sahadev Dajiba patil
57. Shri Sunil Harlal Mujumdar
58. Shri Malloppa Dudappa Gadkari
59. Shri Bhairu Dunduppa Banblade
60. Shri Kallappa Basappa Jangle
61. Shri Gajanan Ramchandra Potdar
62. Shri Dhanaji Ganpati Khade
63. Tammana Baburao Kurbetti
64. Shri Gunanath Gundu Patil
65. Shri Sadashiv Shripati Patil
66. Shri Laxman Rama Bharati
67. Shri Manohar Laxman Bharti
68. Shri Gulab Dastgir Kotge
69. Shri Balgonda Basgonda Patil
70. Sou. Vijaya Tukaram Narvekar
71. Shri Shivaji Mallapa Mugali
72. Jamir Abdul Mulla
73. Shri Shivaji Laxman More
74. Bhagvant Akaram Dhale
75. Shri Suresh Baburao Desai
76. Nivrutti Vitthal Patil
77. Akbar Abdul Mulla ...Petitioners.

V/s.

1. The State of Maharashtra
2. District Collector, Kolhapur
3. Superintendent of Police
4. District Health Officer
5. Maharashtra Council of Indian Medicine ..Respondents.

Shri Kuldeep S. Patil for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO.3035 OF 2006

1.Shri Tukaram Baburao Naikwadi
2. Shri Siddheshwar Dattuling Lingayat
3. Shri Kamalakar Vithal Bhonsale

4. Smt.Sangeeta Balu Bhoje
5. Shri Pandurang Yashwant Vaidya
6. Shri Rajendra Shivram Shinde
7. Shri Suresh Tukaram Desai
8. Shri Shantaram Ronga Bhuwad
9. Shri Gajanan Pandurang Humbare
10. Shri Harishchandra Mahadeo Chandiwade
11. Shri Afraj Asadkhan Dastagir
12. Shri Arjun Shivram Mhadage

V/s.

1. The State of Maharashtra
2. District Collector Ratnagiri
3. The Superintendent of Police
4. The District Health Officer, Ratnagiri.
5. The Maharashtra Council of Indian Medicine ..Respondents

Smt. S.A.Mudbidri for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur, A.G.P. for Respondents.

WITH
WRIT PETITION NO.3232 OF 2005

1. Shri Chandrashekhar Narayan Joshi
2. Shri Shafi Hamjekhan Momin
3. Shri Prataprao Patangrao Pawar
4. Noor Mohamed Baburao Momin ..Petitioners.

V/s.

1. The State of Maharashtra
2. District Collector, Sangli
3. Superintendent of Police
4. District Health Officer
5. Maharashtra Council of Indian Medicine ..Respondents

Shri P.J.Pawar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur A.G.P. for
Respondent/State.

WITH
WRIT PETITION NO.3034 OF 2006

1. Shri Sarjerao Dnyandeo Singhan
2. Shri Satyawan Narayan Natalkar
3. Sou. Suvarna Sarjerao Singhan
4. Sou. Veena Vishwas Sawant
5. Shri Rajaram Dattatraya Zende
6. Shri Bharat Dattatraya Zende
7. Shri Sukhanand Purandhar Dighe
8. Shri Sunil Govind Khatavkar
9. Shri Dadaso Bapuso Salokhe
10. Shri Tanaji Mahadeo Rege
11. Shri Radhakrushna Rajaram Manjarekar
12. Shri Balaram Krushna Pandhare
13. Shri Suresh Ramchandra Tadule
14. Shri Anil Bhikaji Patil
15. Shri Dasharath Maruti Palkar
16. Shri Rajendra Parshuram Samant
17. Shri Shamsundar Ranu Dhuri
18. Sou. Shailaja Vijay Sawant
19. Shri Bhairu Shankar Kumbhar
20. Shri tatoba Gundu Patil
21. Shri Rajan Govind Jadhav
22. Shri Ganapat Laxman Topale
23. Shri Ajit Shantinath Walve
24. Shri Lahu Dehu Sawant
25. Shri Nandkumar Balkrushna Palav
26. Shri Sahadeo Shivram Ghadi
27. Shri Bajarang Dhondiram Shinde
28. Shri Subhash Shivram Parab
29. Shri Shashikant Shankar Parab
30. Shri Sunil Dinkar Talekar
31. Shri Kishor Shantaram Mestri
32. Shri Digambar Hari Dhuri
33. Shri Vijay Pandurang Dalvi
34. Shri Sidram Shankarappa Biradar
35. Shri Shrikant Bandu Gurav

V/s.

1. The State of Maharashtra
2. District Collector, Sindhudurg.
3. Superintendent of Police
4. District Health Officer
5. Maharashtra Council of Indian Medicine ..Respondents

Shri AMit Borkar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.472 OF 2006

1. Shri Sunil Gajanan Gigre
2. Shri Satish Shahaji Sapkal
3. Shri Vijay Dnyandeo Chawan
4. Shri Deepak Babusaheb Patil
5. Shri Appasaheb Maruti Kamathe
6. Shri Pandurang Dagdu Bamane
7. Shri Dastgir Hasan Shaikh
8. Sau. Vijaya Appasaheb Kamathe
9. Shri Dashrath Malhari Raut
10. Shri Suryakant Krishnarao Mohite
11. Shri Suresh Dinkar Waganwar
12. Shri Sunil Ramchandra Gawade
13. Shri Navnath Nanasaheb Dombale
14. Sau. Chaya Ramesh Ranjane
15. Shri Jakhir Husenbhai Inamdar
16. Shri Prakash Anandrao Kadam
17. Shri Samadhan Maruti Dhane
18. Shri Ravindra Keshav Chavan
19. Shri Shankarrao Mahadeo Ghodge
20. Shri Deepak Sopanrao Ghodge
21. Shri Sambhaji Shrirang Dhane ..Petitioners.

V/s.

1. The State of Maharashtra
2. District Collector, Satara
3. Superintendent of Police, Satara
4. District Health Officer, Satara
5. Maharashtra Council of Indian Medicine ..Respondents

Shri P.J.Pawar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.8707 OF 2005

1. Vidya Dilip Rajanna Shinde
2. Vaidya Hanumantrao Kisanrao Sitale
3. Vaidya Krishna Rajappa Shinde
4. Vaidya Jaywant Laxman Katdare
5. Vaidya Bhimrao Vyankat More
6. Vaidya Rajaram Dhondi Gole

7. Vaidya Babanrao Dhondiram Kadam
8. Vaidya Bholanath Maruti Phalke
9. Vaidya Dinkar Ganpati Raut
10. Vaidya Babanrao Krishna Mane
11. Vaidya Ravindra Hanmant Barge
12. Vaidya Waman Mahadeo Bakshi
13. Vaidya Uddhav Pralhad Kulkarni
14. Vaidya Shantaram pandurang Kale
15. Vaidya Amrut Shankar Narkar
16. Vaidya Sambhaji Shivaji Chavan
17. Vaidya Mahadeo Tukaram Patil ..Petitioners.

V/s.

1. The State of Maharashtra
2. Maharashtra Council of Indian Medicine ..Respondents

Shri N.V.Bandiwadekar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.439 OF 2006

1. Vaidya Ashok Shankar Shinde
2. Vaidya Ramchandra Shankar Lad
3. Vaidya Rajendra Anandrao Bhalekar
4. Vaidya Sanjay Yashwant Kachare
5. Vaidya Arunkumar Krishaiyya Shitale
6. Vaidya Chandrashekhar Krishnarao Shinde
7. Vaidya ANandrao Balwant Nalawade
8. Vaidya Suresh Sitaram Chavan
9. Vaidya Sampatrao Ganpadi Kadam
10. Vaidya Shamrao Chandru Shirshat ...Petitioners.

V/s.

1.The State of Maharashtra ...Respondent.

Shri N.V.Bandiwadekar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.459 OF 2006

1. Vaidya Bibhishan Shripati Sonawale

2. Vaidya Prakash Janardan Gaikwad
3. Vaidya Pradip Ambadas Atkare
4. Vaidya Namdeo Narsinha Jadhav
5. Vaidya Prashant Mahadeo Jadhav
6. Vaidya Chandrakant Shrirang Mote
7. Vaidya Sambhaji Ramchandra Atkare
8. Vaidya Gorakh Vithal Sonawane

V/s.

1. The State of Maharashtra
2. District Collector, Solapur ..Respondents.

Shri N.V.Bandiwadekar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.851 OF 2006

1. Vaidya Chandrakant Ramchandra Gurav
2. Vaidya Anandrao Chandru Mali
3. Vaidya Balasaheb Dnyandeo More
4. Vaidya Sudhir Dinkar Marathe
5. Vaidya Shivaji Bapu Kumbhar
6. Vaidya Gopal Jivraj Velani
7. Vaidya Ananda Pandurang Patil
8. Vaidya Mansingh Maruti Kumbhar
9. Vaidya Maruti Ramchandra Walekar
10. Vaidya Dhanaji Ramchandra Rajmane
11. Vaidya Ananda Jagannath Patil
12. Vaidya Ashok Keshav Kajari ..Petitioners

V/s.

The State of Maharashtra ..Respondent.

Shri N.V.Bandiwadekar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.8899 OF 2005

1. Shankar Nanaso Pawar
2. Narayan Abaso Bagal
3. Ganpati Dattatraya Pawar

4. Ismail Makbool Mokashi
5. Ganpati Tarachand Ladwa
6. Secundar Mohammed Hussain Gadkari
7. Vasant Shamrao Jamdale
8. Vijay Jinlas Palse
9. Ramdas Tatyaba Kumbhar
10. Prakash Pandurang Nangare
11. Uddhav Pralhad Kulkarni
12. Ganpatrao Baburao Bhosale
13. Pradip Hindurao Kalokhe
14. Ayyaz Ismail Shaikh
15. Shankar Pandurang Garud
16. Sanjay Baburao Salunkhe
17. Gajanan Baburao Shinde
18. Bhagwan Tana Gosavi
19. Anil Shankar Shinde
20. Narayan Govind Shinde
21. Ashok Baburao Shitode
22. Smt. Mangal Ramesh Chavan
23. Jayant Laxman Katdare
24. Ashok Shamrao Gaikwad
25. Sadashiv Pandurang Umrali
26. Ravikumar Shankar Pisal
27. Prabhakar Balkrishna Jadhav
28. Ravindra Baburao Shinde
29. Ramchandra Rangrao Kakade
30. Shivaji Pandurang Sonawane ..Petitioners.

V/s.

1. The State of Maharashtra
2. District Collector, Satara
3. Superintendent of Police
4. District Health Officer
5. Maharashtra Council of Indian Medicine ..Respondents

Shri C.G.Gavanekar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
CRIMINAL WRIT PETITION NO.1507 OF 1994

1. Dr.Sitaram D. Vishwakarma
2. Dr. L.R.Yadav
3. Dr. B.K.Singh
4. Dr.U.I.Yadav

5. Dr.Rustam Patel
6. Dr.R.V.Barai
7. Dr.R.S.Yadav
8. Dr.Kusum D. Gupta
9. Dr.S.J.Gupta
10. Dr.K.D.Bharadwaj
11. Dr.Rajendra Pratap Patel
12. Dr.Kuldeep Singh ..Petitioners.

V/s.

1.The State of Maharashtra
2. Commissioner of Police, Bombay.
3. The Inspector In Charge Kandivali (E)...Respondents.

Shri V.G.Tangsali for the Petitioners.
Smt. P.H.Kantharia, A.P.P. for the State.

WITH
CRIMINAL WRIT PETITION NO.237 OF 1995

1. Dr.Ram Awadh V. Yadav
2. Dr.Dilip Premchand Nahata
3. Dr.Vijay P. Sancheti
4. Dr.Bharat V. Sharma
5. Dr.Pawan Pralhad Singh
6. Dr. Ghanshyam R. Jha
7. Dr. Vidyasagar A. Hage ..Petitioners.

V/s.

1.The State of Maharashtra
2. Commissioner of Police, New Bombay.
2A. The Commissioner of Police, Thane.
3.The Superintendent of Police, Thane.
4. The Inspector In Charge Rabale
5. The Inspector In Charge Bhoisar
6. The Inspector In Charge Turbhe ... Respondents.

None present for the Parties.

WITH
WRIT PETITION NO.128 OF 1996

1.Vilas Raharam Patel
2.Dr.Bhiva Gangaram Gawas
3.Dr.Padmakar Murlidhar Tayade

4.Dr.Quazi Nazimuddin Mustaqeemuddin
5.Dr.Sahablal R. Yadav
6.Dr.Birjesh Ramshankar Yadav
7.Dr.Ankush Yashwant Sawant
8.Dr.Geeta Rajaram Patel
9.Dr.Neelam Laxmichand Haria
10.Dr.Prakash Asharam Nishad
11.Dr.Manish Virji Somaiya]
12.Dr.Naghma Rabbab Iaqvi
13.Dr.Suresh Dharamraj Pachegaonkar
14.Dr. Alpesh Sarad Raiyani
15.Dr.Chandrashekharram Shankar Jaiswal
16.Dr.Naresh Shivcharan Ahirwar
17.Dr.Asma Gulamnabi Isab
18.Dr.Jignesh Hasmukhlal Bhalawat
19. Dr.Ambili Surendran Prasa
20.Dr.Sandeep Padam Singh
21. Dr.Anigha Sanjay Patil
22. Dr.Virenra Mahendra Tripathi
23.Dr.Dwarkadas Bhavnath Shukla
24.Dr.Jugal Panjabrao Jadhav
25. Dr.Sunjay Gangaram Gawas ...Petitioners.

V/s.

1. The State of Maharashtra
2. The Secretary to the Government of Maharashtra
3. The Commissioner of Police, Bombay ...Respondents.

Petitioners absent.
Shri A.A.Kumbhakoni, Associate Advocate General with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.129 OF 1996

1.Dr.Rajesh Chaurasia
2.Dr.Mahesh Kurte
3.Arun Singh ..Petitioners

V/s.

1. The State of Maharashtra
2. The Secretary to the Government of Maharashtra
3. The Commissioner of Police, Bombay. ..Respondents.

Shri B.G.Tangsali for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.3461 OF 1996

1.Dr. Jainath S. Yadav
2. Dr. Yogendra L. Singh.
3. Dr. Santosh R. Barai
4. Dr. Mohan Singh.
5. Dr. Shailesh D. Pathak
6. Dr.Rohini S. Pandey ..Petitioners.

V/s.

1.The State of Maharashtra
2.The Secretary to the Government
of Maharashtra
3.The Commissioner of Police, Thane...Respondents.

Shri B.G.Tangsali for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO.5591 OF 1997

1.Dr.Babita Dinesh Singh
2.Dr.Yamuna Babulal Dave
3.Dr.Farheen Dilawar Modak
4.Dr.Odungad Safiya Kunju Mohd.
5.Dr.Bibi Rani Mohd. Zarif
6.Dr.Jyoti Raghunath Hambhire
7.Dr.Surekha Namdeo Dhanwade
8.Dr.Krishna Kanhiyalal Jaiswal
9.Dr.Sanjay Asharam Shukla
10.Dr.Tazamal Sharif Khan
11.Dr.Keshavprasad Rudranath Pandey
12.Dr.Ramchandra Ramdhani Yadav
13.Dr.Sanjay Mataprasad Sharma
14.Dr.Ashok Bhikabhai Prajapati
15.Dr.Subhashchandra Shankarlal Rawal
16.Dr.Chetan Narharbhai Dave
16A.Dr.Preeti Chandulal Gharat
17.Dr.Amrutha Anantha Belle
18.Dr.Yadvendra Gyanendra Yadav

19.Dr.Suryaprakash Rampyare Yadav
20.Dr.Mukesh Dinanath Pandey
21.Dr.Sunita Shankar Vishwakarma ..Petitioners.

V/s

1. The State of Maharashtra
2. The Commissioner of Police, Mumbai
3. The Superintendent of Police, Thane ..Respondents.

Shri U.S.R.Singh for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.6243 OF 1998

1.Dr.Arvind Singh S/O Lalbahadur Singh
2.Dr.Lal Chandra Yadav S/O Rambahadur Yadav
3.Dr.Premchandra Laltaprasad Yadav

V/s.

1.The State of Maharashtra
2.The Secretary to the
Government of Maharashtra
3.The Commissioner of Police, Bombay ..Respondents.

Shri R.O.Phatak for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondents.

WITH
WRIT PETITION NO.2236 OF 2006

1.Dr.Prasad Krishnarao Pawar
2.Dr.Rajkumar Balkrishna Nikam
3.Dr.Hemantkumar Subhashrao More
4.Dr.Rajendra Jagannath Jadhav
5.Dr.Anil Sarjerao More
6.Dr.Hanmant Kashinath Deshmukh
7.Dr.Ramesh Pandurang Pasalkar
8.Dr.Dyandeo Kisan Pawar
9.Dr.Subhash Dyandeo Chawan
10.Dr.Baburao Narsaiya Shinde ..Petitioners.

V/s.

1.The State of Maharashtra
2.District Collector, Satara
3.Superintendent of Police

4.District Health Officer
5.Maharashtra Council of Indian Medicine ..Respondents.

Shri P.J.Pawar for the Petitioners.
Shri A.A.Kumbhakoni, Associate Advocate General
with Smt.M.P.Thakur,A.G.P. for Respondent Nos.1 to 3.

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

DATE : 22ND DECEMBER, 2006.

JUDGMENT (PER J.H. BHATIA, J.)

. All petitions may be disposed of by common judgment. These petitions may be divided in three groups. In the Writ Petition Nos. 5526/95, 1388/96, 4341/96,7648/2000, 1579/2002, 2575/2003, 9160/2003, 9162/2003,9178/2003, 847/2006, 2025/2006, 3047/2006, 377/2001, 5584/2006, 6537/2006,OSWP Nos 407/1992,3693/1991 and 452/2005 the petitioners claim to hold either the degree or diploma of Vaidya Visharad or Ayurved Ratna or some other equivalent degree awarded by Hindi Sahitya Sammelan Prayag or Hindi Sahitya Sammelan Allahabad and some other institutions, whose degrees and diplomas are not recognised in Schedule II of the Indian Medical Central Council Act, 1970 (In short The Central Act). Most of them claim to have been registered with the State Council of Bihar, Madhya Pradesh and Andhra Pradesh. These degrees and diplomas in Ayurveda

conferred by Hindi Sahitya Sammalan Prayag after 1967 and all the degrees and diplomas conferred by Hindi Sahitya Sammelan Allahabad are not recognised qualification for the purpose of practice in Indian Medicines. They are prohibited from practicing as such in the State of Maharashtra by virtue of the Provisions of Maharashtra Medical Practitioners Act, 1951 (for short Maharashtra Act as well as the Central Act). They also apprehend prosecution at the instance of the State of Maharashtra and its officers on the ground that they are practicing without necessary qualifications and registration. In this group of petitions the petitioners claim that the degrees and diplomas held by them should be recognised by setting aside certain remarks from Schedule II of Central Act and the State of Maharashtra be directed to register them under Maharashtra Act. They also seek declaration that the provisions of Section 17 (3A), 18, 33 of the Maharashtra Act, are discriminatory, arbitrary and ultra vires the constitution and they are inconsistent and repugnant to the provisions of section 29 of the Central Act and that section 25 of the Central Act is also unreasonable and discriminatory.

2. In second group of writ petitions, Writ Petition Nos.7184/98, 2104/06, 3035/06, 3232/06, 3034/06, 472/06, 8707/05, 439/06,459/06, 851/06 and 8899/05, the petitioners claim to be practicing in Ayurved on the basis of long experience and in view of the provisions of Section 37 of the Maharashtra Act though they do not claim to hold any qualifications prescribed for Ayurvedic practice under the Central Act or the Maharashtra Act. As they are not registered medical practicioners, they are apprehending prosecution in view of a letter dated 19th February, 1998, issued by Medical Education and Drugs Department, Government of Maharashtra. Pending these petitions Section 37 of the Maharashtra Act came to be deleted from the Maharashtra Act, by Maharashtra Medical Practitioners (Amendment), Act, 2005. In some of these petitions the said amendment is also challenged on the ground that in spite of deletion of Section 37, the State Government has not made any amendment in Section 33, whereby the Government has still retained powers to grant exemption from the provisions of Maharashtra Act in respect of registration as a condition for practice.

3. In third group of writ petitions, Criminal Writ

Petition Nos. 1507/94, 237/95, and W.P. 128/96, 129/96, 3461/96, 5591/97, 6243/98, 2236/06, the petitioners claim to hold degrees or diplomas in Electropathy or Homeo- Electropathy. They are also not registered Medical Practitioners under the Maharasthra Act or the Central Act. According to them, they do not require any such registration but in spite of this, by letter dated 30th March, 1994 issued by Medical Education and Drugs Department of Government of Maharashtra, they are either facing prosecution or they are apprehending prosecution for practicing Electropathy or Homeo-Electropathy for want of recognised qualifications and registration as Medical Practitioners under the Maharashtra Act. They seek to quash the said letter/directions and also seek to restrain the concerned authorities from preventing the petitioners from practicing in Electropathy/ Homeo-Electropathy.

4. Though these three groups have different shades, all these matters pertain to interpretation and applications of the provisions of Central Act and Maharashtra Act and therefore, all these writ petitions may be disposed off by this common judgment.

5. Heard the learned Counsel for the parties.

6. The affidavit of Director, Directorate of Ayurved, Maharashtra State has been filed explaining the scope of provisions of Central Act and the Maharashtra Act. It is contended that before the amendment of 1979 in the Maharashtra Act, there were two categories of the medical practitioners. It is contended that basic object of the Central Act is to regulate the minimum qualifications for practicing Indian Medicine and to provide for constitution of Central Council of Indian medicines and the maintenance of Central Register of Indian Medicines and the matters connected therein. The object is also to regulate the practice of large number of registered Practioners in this system. As set out by the statement of objections and reasons the main function of the Central Council is to evolve uniform standard of education and in registration of practitioners medicines of the Indian medicines to ensure that unqualified persons are prevented from entering into this practice. The Central Act clearly identifies the recognised medical qualification and degress/diplomas conferred or awarded by different Medical Colleges and Institutions in Second, Third and

Fourth Schedule. Hindi Sahitya Sammelan Allahabad is not one of the institutes recognised for the purpose of imparting education in Ayurved and therefore, the degrees and diplomas in Ayurved conferred by Hindi Sahitya Sammelan, Allahabad are not recognised medical qualifications in the Second Schedule. However, Hindi Sahitya Sammelan, Prayag was recognised under the erstwhile Rules in the State of Uttar Pradesh from the year 1931 to 1967. As it was found that the standard of education and examination etc. was not upto the mark, in the Second Schedule the degrees of Vaidya Visharad and Ayurved Ratna conferred by Hindi Sahitya Sammelan Prayag during the period from 1931 to 1967 are shown as recognised medical qualifications. However, such degrees conferred after 1967 are not recognised medical qualifications as per the Second Schedule Validity of these provisions has been upheld in number of matters by the Supreme Court. It is contended that in view of this, the petitioners, who have been conferred such degrees and diplomas in Ayurved either by Hindi Sahitya Sammelan, Prayag after 1967 or by Hindi Sahitya Sammelan Allahabad at any time, do not hold recognised medical qualifications and therefore, under the provisions of the Central Act, as well as, the Maharashtra Act they

are not entitled to be registered as medical practitioners in Indian Medicines. The provisions of Section 18 of the Maharashtra Act prior to the Amendment Act in 1979 were in conflict with the provisions of section 17 of the Central Act which prohibits unqualified persons from practicing and therefore, Section 18 was appropriately amended. Taking into consideration the actual shortage of the medical practitioners in Rural area, even the persons who were not duly qualified but had long experience in practicing Indian Medicines were allowed to practice in Rural Areas subject to certain conditions. However, it was found that these provisions were being misused and quacks had entered in this practice and did not serve any purpose of providing medical aid and further because the provisions of section 37 of the Maharashtra Act were also in conflict with section 17 of the Central Act, Section 37 has been deleted by Amendment of 2005. It is contended that no fundamental right or legal right of the petitioners are violated or breached by the provisions of either Central Act or the Maharashtra Act as amended, and therefore, the petitions are liable to be dismissed.

7. There is no dispute that the basic object of the Central Act is to regulate minimum qualifications for practicing in Indian Medicines and to evolve uniform standards of education and in registration of practicioners of the Indian Medicines, through out the country. The purpose is to ensure that unqualified persons are not allowed to practice in this field. The scheme of the Act as far as it is relevant for the purpose of these petitions may be stated in brief. The important definitions of section 2(1) of the Central Act are as follows:-

> *"2(1e) "Indian Medicine" means the system of Indian Medicine commonly known as Ashtang Ayrveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time."*
>
> *"2(1h) "Recognised Medical qualification" means any of the medical qualifications, including post graduation, medical qualification, of Indian Medicine included in Second,Third or Fourth Schedule;*
>
> *"2(1d) "Central Register of Indian Medicine" means the register maintained by the Central Council under this Act;*
>
> *"2(j) "State Register of Indian Medicine" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian Medicine;*

From the definition of recognised medical qualification it is clear, that only the medical qualifications, including post graduate medical qualifications, of Indian Medicines included in Second, Third and Fourth schedule are recognised. Section 14(1) of the Central Act provides that the medical qualification granted by any University, Board or other institution in India, which are included in the Second schedule, shall be recognised medical qualifications for the purpose of this Act. Section 14 Sub-section (2) provides that any University, Board or other medical institutions in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised and Central Government, after consulting Central Council may by Notification in the Official Gazette amend Second schedule so as to include such qualification therein. Such Notifications may also direct that an entry should be made in the last column of the Second schedule against such medical qualification declaring that it shall be recognised medical qualification only when granted after a specific date. From this it is clear that when any University, Board or Medical Institution grants medical qualification, which is not already

included in the Second schedule, such University, Board or Medical Institution may also apply for inclusion of the same and after consulting with the Central Council, Central Government may notify and then it may be included in the Second Schedule. Section 15 provides for certain medical qualifications granted to a citizen of India before 15th August, 1947 and Section 16 provides that medical qualifications to be granted by Foreign medical institutions to be included in the Third and Fourth schedule. For the purpose of the present petitions section 15 and 16 and Third and Fourth schedule are not relevant.

8. Section 17 of the Central Act reads as follows:-

> *"17(1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrollment or any State Register of Indian Medicine.*
>
> *(2) Save as provided in section 28, no person other than a practitioner of Indian Medicine who possess a recognized medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,-*
>
> *(a) shall hold office as Vaid, Siddha, Hakim or Physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other*

authority;

(b) shall practise Indian Medicine in any State;

(c) Shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872), on any matter relating to Indian Medicine.

(3) Nothing contained in sub-section (2) shall affect,-

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practice Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practice Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian medicine for not less than five years.

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956) including the right of practice medicine as defined in clause (f) of section 2 of the Said Act, on persons possessing any qualifications

included in the Schedules to the said Act.

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

From this it is clear that subject to other provisions contained in the Act, any medical qualifications included in the second, third and fourth schedule shall be sufficient qualification for enrollment on any State Register of the Indian Medicines and no person who does not possess recognised medical qualification and who is not enrolled on the State Register or the Central Register of the Indian Medicines shall be allowed to practice Indian Medicines in any State. Section 17(4) clearly provides that any person who acts in contravention of section 2 sub-section (2) shall be punished with imprisonment or fine or both.

9. Section 22 of the Central Act provides that Central Council may prescribe minimum standard of education in Indian Medicines required for granting recognised medical qualification by Universities, Boards or Medical Institutions in India. Entry No. 105 in the Second Schedule pertaining to Hindi Sahitya Sammelan Prayag clearly provides that Degree of Vaidya Visharad

and Vaidya Ratna conferred from 1931 to 1967 by Hindi Sahitya Sammelan Prayag shall be recognised medical qualifications. From this, it is clear that the degrees for Vaidya Visharad and Ayrved Ratna by Hindi Sahitya Sammelan,Prayag after 1967 are not recognised Medical qualifications under Second Schedule of the Central Act. It may also be noted that in the Second Schedule there is no entry of any degree or diploma conferred by Hindi Sahitya Sammelan, Allahabad as recognised medical qualification. It is contended on behalf of the petitioners that there is no rational or logic in putting cut off date of 1967 for recognition of the degrees provided by Hindi Sahitya Sammelan, Prayag. It is contended that Hindi Sahitya Sammelan, Prayag as well as Hindi Sahitya Sammelan, Allahabad have been doing a great job in propagation of Ayurved in the country and large number of persons taught and trained by these two institutions have for long provided great service to the society by Ayurvedic treatment and therefore, there should be no justification to refuse recognition to degrees of these institution. As stated earlier the very object and purpose of the Central Act is to regulate the standards of education in Indian medicine and to prescribe uniform standards of education and a

registration and therefore, it was found necessary to make such enactment. As pointed out Section 22 of the Central Act provides that the Central Council may prescribe minimum standards of education in Indian Medicines. It is for the Central Council to find out whether particular College or Institution is maintaining minimum standard of education or not. If it is not satisfied with the standard of education and its examination procedure, it may refuse recognition to the degrees and diplomas conferred by such institution. It is pointed out on behalf of the State that under the prevailing relevant rules upto 1967, the degrees of Vaidya Visharad and Ayurved Ratna were recognised by Uttar Pradesh Government and its Council. After that it lost the recognition. Therefore, these degrees conferred by Hindi Sahitya Sammelan, Prayag till 1967 only were recognised as medical qualifications under the Central Act but after that the recognition to these degrees was refused.

10. It appears that the validity of entry No.105 in the Second Schedule was subject matter for consideration in number of matters. In **Ishaq Husain Razvi V. State of U.P and others V. AIR 1993 Allahabad 383, Dr.**

Ravinder Nath V.State of Hariya and Panjab and others 1993 supp (2) S.C. C. 639, Delhi Pradesh Registered Medical Practitioners V/s Director Health Delhi Admn. Services and others (1997) (11) S.C.C. 637, and State of Rajasthan V. Late Arun (2002) 6 SCC 252. It was clearly held t**hat the** degrees of Vaidya Visharad and Ayurved Ratna conferred by Hindi Sahitya Sammelan Prayag from 1931 to 1967 only were recognised medical qualifications and such degrees conferred after 1967 are not recognised medical qualifications. It may be noted that in Dr. Ravindar Nath reference was made to the degrees of Vaidya Visharad and Ayurved Ratna conferred from 1931 to 1967 but they were referred as the degrees and diplomas conferred by Hindi Sahitya Sammelan, Allahabad. However, if the whole judgment is read carefully it becomes clear the reference was to entry No. 105 in the Second Schedule which speaks about the degrees of Vaidya Visharad and Ayrved Ratna conferred by Hindi Sahitya Sammelan Prayag. In fact, Prayag is a part of Allahabad and possibly due this reason the judgement of Dr. Ravinder Nath, Hindi Sahitya Sammelan Allahabad is referred instead of Hindi Sahitya Sammelan Prayag. In fact entry No. 105 does not refer to Hindi Sahitya Sammelan Allahabad and therefore, merely because

in the said judgment reference is made to Hindi Sahitya Sammelan, Allahabad it cannot be accepted that these degrees conferred by Hindi Sahitya Sammelan Allahabad even during the period from 1931 to 1967 are recognised medical qualifications. It may be noted that in **Civil Misc. Writ Petition NO. 1546/2003 Umakant Tiwari V/s State of Uttar Pradesh decided on 21/6/2002**, a Division Bench of Allahabad High Court clearly held that Hindi Sahitya Sammelan Prayag and Hindi Sahitya Sammelan Allahabad are two different institutions. The degrees of Vaidya Visharad and Ayurved Ratna awarded by Hindi Sahitya Sammelan Allhabad are not recognised for any purpose and for any period whatsoever in the Central Act, whereas degrees of Vaidya Visharad and Ayurved Ratna awarded by Hindi Sahitya Sammelan Prayag from 1931 to 1967 are recognised medical qualifications. It was further held that Hindi Sahitya Sammelan Allahabad is a fake institution, whereas the Hindi Sahitya Sammelan Prayag was recognised only from 1931 to 1967 as far as degrees in Ayurveda are concerned.

11. It is brought on record that Hindi Sahitya Sammelan, Allahabad was constituted mainly to promote, spread of Hindi Language, to work for the promotion,

development and advancement of Hindi Literature and Dev Nagri script and to arrange for holding of examination through medium of Hindi language. Hindi Sahitya Sammelan Act 1962, nowhere provides that Hindi Sahitya Sammelan, Allahabad was established also for the purpose of imparting education in Ayurved and to confer or award degrees in Ayurved. By letter dated 28/4/2006 from the Central Counsel to the Director, Directorate of Ayurved, Mumbai, it is clarified that Hindi Sahitya Sammelan, Prayag and Hindi Sahitya Sammelan Allahabad are two different institutions, while the degrees of Ayurved Ratna and Vaidya Visharad awarded by Hindi Sahitya Sammelan, Allahabad are not recognised, such degrees awarded by Hindi Sahitya Sammelan, Prayag from 1931 to 1967 are recognised. Taking into consideration all these facts and circumstances, there remains no doubt that the petitioners holding degrees of Vaidya Visharad or Ayrved Ratna awarded by Hindi Sahitya Sammelan, Allahabad cannot claim to be holding recognised medical qualifications. It is not the case of any of the petitioners before this court that he was awarded degree of Vaidya Visharad or Ayurved Ratna by Hindi Sahitya Sammelan Prayag during the period from 1931 to 1967. So the petitioners, who claim to have degrees from Hindi

Sahitya Sammelan, Prayag also admit that such degrees were awarded to them after 1967 and therefore, it must be held that they also do not possess the recognised medical qualifications.

12. It is contended on behalf of the petitioners that most of them are enrolled on the State list of Bihar or Madhya Pradesh or Andhra Pradesh. According to them, a person who is enrolled in the State Register of Indian medicines maintained by any State is entitled to practice in any part of the Country. It is contended that an Indian Citizen is entitled to reside, travel, settle and carry on business or profession in any part of the country and therefore, if the petitioners, who are enrolled on the State register of Indian Medicines maintained by Bihar, Madhya Pradesh, Andhra Pradesh are prevented from practicing in the State of Maharashtra, it would be violation of Their fundamental right under article 19 (1)(g) of the Constitution. It is also contended that not only they are enrolled on the State register of Bihar, Madhya Pradesh, Andhra Pradesh or other States but they are entitled to vote in the election for the Constitution of the Central Council. and thus, they are recognised medical practitioners even

by Central Council.

13. Section 3 of the Central Act provides for the Constitution of Central Council Section (3)(1) (a) reads as follows;

> *(1) The Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Central Council consisting of the following members, namely:-*
>
> *"(a) Such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First Schedule for each of the Ayurveda, Siddha and Unani systems of medicine from such State in which a State Register of Indian Medicine is maintained, to be elected from amongst themselves by persons enrolled on the Register as practitioners of Ayurveda, Siddha or Unani, as the case may be;"*

It shows that a person who is enrolled on the State Register as medical practitioner of Ayurved Siddha or Unani is entitled to vote for election of the representatives of the State for such system.

14. Section 17 of the Maharashtra Act deals with the preparation of the Register of Practitioners of the Indian Medicines. It reads as follows:

"17.(1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of [practitioners of Indian Medicine] for the State, in accordance with the provisions of this Act.

(2) The register shall be divided into [three parts], namely:-

(i) Part I containing the names of practitioners who possess any of the qualifications specified in the Schedule;

(ii) Part II containing the names of practitioners, whose names were included in that part immediately before the 1st day of October, 1976;

(iii) Part III containing the names of practitioners, who on the 30th day of September 1976 were enlisted practitioners and who are on that day deemed to have become registered practitioners under section 18.]

Each part shall consist of one or more sections as the State Government may specify in this behalf.

(3) Every person who possesses any of the qualifications specified in the Schedule shall, at any time on an application made in the form prescribed by rules, to the Registrar and on payment of a fee of [five hundred rupees] be entitled to have his name entered in the register.

[(3A) Notwithstanding anything contained in any law for the time being in force, every person enrolled on the register maintained under the Indian Medicine Central Council Act, 1970, but not enrolled on the register maintained under this Act, shall, on an application and on payment of the fee as provided in sub-section (3), be entitled to have his name entered in the

register maintained under this Act.]"

15. Each State may have its own law about the registration of medical practitioners. Section 23 (1) of the Central Act reads as follows:

> *"23(1) The Central Council shall cause to be maintained in the prescribed manner, a register of practitioners in separate parts for each of the system of Indian medicine to be known as the Central Register of Indian Medicine which shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications."*

Section 24 of the Central Act provides that each State Board shall supply to the Central Council three printed copies of State register of Indian medicines as soon as may be after commencement of the Act and subsequently after 1st day of April of each year. If we read these two section together it becomes clear that the State Board provides the copy of the register of Indian Medicines to the Central Council and names of those practitioners **who are enrolled on the state register and who also possess any of the recognised medical qualifications** are to be included in the Central Register. Section 25 of the Central Act reads as

follows:-

> *"25- The Registrar of the Central council may on receipt of the report of registration of a person in a State Register of Indian Medicine or on application made in the prescribed manner by any person, enter his name in the Central Register of Indian Medicine, provided that the Registrar is satisfied that the person concerned is eligible under this Act for such registration."*

From this it is clear that a person may be enrolled on the Central Register either by making an application to the Central Council or on the basis of report of registration and enrollment on the State Register but in either case the Registrar of the Central Council has to be satisfied that the person concerned is eligible under this Act for such registration. Section 17(1) provides that subject to other provisions contained in the Act any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualifications for enrollment on any State Register of the Indian Medicine. From these provisions of the Central Act, it is clear that only a person holding recognised medical qualifications included on the Second, Third and Fourth schedule is entitled to be enrolled on the State

Register. If he holds such qualification and is enrolled on the State Register, on the basis of the report from the State Board his name can be enrolled on the Central Register. A person may also opt to enroll himself directly to the Central Council by making an application and if he holds recognised qualifications he may be enrolled on the Central Register directly. In view of section 17(2)(b) no person other than one who possess recognised medical qualification and is enrolled on the State Register or Central Register of Indian Medicines shall practice Indian Medicines in any State. Section 29 provides that a person who is enrolled on the Central Register shall be entitled to practice in any part of India. If these provisions are carefully seen, if a person is registered with the State Register, he can practice in that State only but if he is enrolled with the State Register and also holds recognised qualifications, he can be enrolled in the Central Register and once he is enrolled on the Central Register he can practice in any part of the Country. However, if his name is not enrolled on the Central Register he cannot practice in any part of the Country expect the State in which he is enrolled.

16. Section 17 (3A) of the Mahrashtra Act also provides that a person who is enrolled on the register maintained under the Central Act but not enrolled on the register maintained under the Maharashtra Act, shall on application and on payment of fee prescribed under sub-section (3) shall be entitled to have his name entered in the register maintained under the Maharashtra Act and thus, it would give him the Status of the registered medical practitioners within the State of Maharashtra. In view of this, the petitioners who are enrolled with other States like Bihar, Madhya Pradesh, Andhra Pradesh and Rajasthan etc. may be entitled to practice in those states but merely on the basis of enrollment in those States or any one of them, they cannot claim a right to practice in the State of Maharashtra. However, if they want to practice in Maharashtra either they will have to register with the Central Register or with the State Register maintained under the Maharashtra Act. It is difficult to accept that merely because the States in which they are enrolled have allowed them to vote, they should also be deemed to have been registered with the Central Register. It is possible and it appears that even though the petitioners do not hold recognised medical

qualifications as per the Central Act, they are enrolled in Bihar, Madhya Pradesh or Andhra Pradesh. In fact when they do not hold recognised qualifications, the Central Council can refuse to enter their names in the Central Register in spite of their names have been sent by the respective States. If the petitioners feel that they are in fact entitled to be enrolled , they can apply either to the Central Council or State Council of Maharashtra and if they are registered they may be allowed to practice but as long as they do not hold recognised medical qualifications and they are not enrolled either on the State Register of Mahrashtra or on the Central Register, they cannot legally claim any right to practice at least in the State of Mahrashtra.

17. On behalf of the petitioners it is contended that though the provisions of section 17 and 18 and 33 were amended by the Maharashtra Amendment Act 1979, the effect to these amendments was given from 1st October, 1976. Thus the retrospective effect was given to those amendments and vested rights of the certain medical practitioners were withdrawn. According to them for this reasons, the amendments are bad in law and unconstitutional. There is no substance in these

contentions. In fact section 17 and Chapter IV consisting of section 23 to 31 of the Central Act come into force, from 1/10/1976 and therefore, it was necessary for the State of Maharashtra to make suitable amendments in the Maharashtra Act to avoid any inconsistency or repugnancy with the Central Act. In **Virender Singh Hooda and others V. State of Haryana and another** (**(2004) 12 SCC 588),** it was held that the Legislative power to make law with retrospective effect is well recognised. In para 34, Their Lordships observed as follows:-

> *"34-Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect Craies on Statute Law (7th Edition) at P. 387 defines retrospective statutes in the following words;*
>
> *"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or consideration already past."*

After reference to certain authorities in paragraph 35 Their Lordships referred to Craies of Statute Law (7th Edition) at page 396 wherein the Author observed as under:-

> *"P. 396 If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."*

Taking into consideration this position, Their Lordships held that the public interest at large is one of the relevant consideration in determining the constitutional authority for retrospective legislation. The provisions of medical facilities by qualified medical practitioners is certainly in the larger interest of the society and therefore, if the State Government made amendments with retrospective effect to bring its law in consonance and conformity with the Central Act, it is difficult to find any fault with the same.

18. It may be noted that even while making the amendment, the State Government tried to protect the interests of the medical practitioners, practising prior to 1st October, 1976. At the cost of repetition Section 17(3) of the Central Act may be reproduced again:

> "*17(3) Nothing contained in sub-section (2)*

shall affect,-

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practice Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practice Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practising Indian medicine for not less than five years.

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956) including the right to practice medicine as defined in clause (f) of section 2 of the Said Act, on persons possessing any qualifications included in the Schedules to the said Act."

In view of the protection given by Section 17(3) of the Central Act to the practitioners enrolled on the State Register, or practicing in any State for 5 years the State Act was also suitably amended and in Section 17(2) of the Maharashtra Act it was provided that the names of practitioners whose names were included in part II of the Register immediately before 1st October, 1976 would

be contained in part II of the register, which was to be in three parts. Not only this, the persons who were enlisted as practitioners on or before 30th September, 1976 were also included in part II of the Register and they are deemed to have become registered practitioners under Section 18 of the State Act. Thus, even though, certain medical practitioners who were having qualifications as par the State Act and were registered under the State Act before 1/10/1976 but were not having sufficient qualifications as per Central Act, were deemed to have been registered under Section 17 (2)) of the State Act and those, who were not having any qualifications but were enlisted practitioners, were also provided protection under section 18 of the State Act by way of amendment. Thus, there should be no grievance for the medical practitioner who was registered or enlisted under the State Act before 1.10.1976 because their rights of practice were not taken away, by the amendment. Those who were not registered or enlisted before 1/10/1976 nor hold recognised qualifications, cannot make any grievance and incidently none of the present petitioners has come with the plea that he was registered or enlisted as a medical practitioner in Mahrashtra after 1/10/1976 but before

the amendment of 1979.

19. With reference to these aspects it would be useful to quote para 43 from case **Dr. Mukhtiar Chand and others V/s State of Punjab and others ((1998) 7 SCC 579):-**

> *"43. It will be appropriate to notice that the 1970 Act also maintains a similar distinction between a State Register of Indian Medicine and the Central Register of Indian Medicine. Whereas the State Register of Indian Medicine is maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian Medicine, the Central Register of Indian Medicine has to be maintained by the Central Council under Section 23 of that Act. For a person to be registered in the Central Register, Section 25 enjoins that the Registrar should be satisfied that the person concerned was eligible under the Act for such registration. Keeping this position in mind, if we read Section 17(3)(b), it becomes clear that the privileges which include the right to practise any system of medicine conferred by or under any law relating to registration of practitioners of Indian Medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine, are not affected by the prohibition contained in sub-section (2) of Section 17.*

20. On behalf of the petitioners it was argued that

by prohibiting the medical practitioners registered with other States from practicing in the State of Maharashtra, the Maharashtra State has practically tried to nullify the registration in the other State and these amendments amount to extra territorial legislation. There is no substance in this contention. The Maharashtra Legislation has not made any law which would be applicable in the territory of the other States. It has made law only to regulate the practice of medical practitioners within the State of Maharashtra and the Maharashtra Legislation is in conformity with the Central Act. The Maharashtra Act or Amendment Act do not take away rights of such petitioners from practicing in the respective States where they are registered.

21. It may be noted that according to some of the petitioners, they were being harassed by the police and were threatened to be prosecuted. According to them, some of the petitioners having diplomas and degrees from other States had registered themselves either with Maharashtra State Council of Indian Medicines or with Medical Council of other States. Therefore, earlier they had filed some Writ Petitions. The Writ Petition No. 2915/2001 came to be disposed off by order dated

26/6/2001 passed by the Division Bench of this Court, presided over by the then Hon'ble Chief Justice B.P. Singh. The Court had directed as follows:-

> *" We direct the petitioner to make such a representation within a period of four weeks from today, whereafter the competent authority of Respondent No.1 will take decision in the matter, having regard to the provision of section 37 of the Act. Till such representation is not disposed of, no action shall be initiated under the Act, against the petitioner, and thereafter any action may be taken in accordance with the finding recorded by the competent authority."*

It is contended that in spite of that, unnecessarily enquiries were continued by the CID and other authorities. In fact that was the order in the writ petition wherein petitioner claimed to be covered by Section 37.

22. In affidavit-in-reply filed by Police Inspector, Rajan Balkrishna Katdare, it is clarified that during the Winter Session of Maharasthra Legislative Assembly, in the year 2000, there was discussion about the registration of medical practitioners on the basis of fake and forged degrees and diplomas or by deviating

from the established procedure. As promised on the floor of the House, Government of Maharashtra constituted a High Powered Committee to probe into these allegations. The Committee verified certain records. Certain degrees and diplomas were referred to the Universities and Institutions from which they were allegedly issued. After enquiry, it was found that a large number of Ayurvedic Medical Practitioners, who had got themselves registered or had sought registration with Maharashtra Council of Indian Medicines, had produced false, fake and forged degrees and diplomas. Some of them had also produced false certificates about the registration out side the State of Maharashtra. Large number of persons were also arrested for such illegal acts.

23. We have already clarified that only the persons having requisite qualifications can be allowed to practice and it is necessary that they should get themselves registered with Maharashtra Council of Indian Medicines, which is naturally expected to follow the proper procedure and verification before granting registration. If such persons get themselves registered with Central Council of Indian Medicines, they will also

be entitled to practice in Maharashtra, because by getting registered with Central Council of Indian Medicines they also get a right to be registered with the State Council of Indian Medicines. Therefore, we do not see any force in the contention that some of the petitioners are being unnecessarily and arbitrarily harassed. Further, in the W.P 2915/2001, this Court had given protection to the Medical Practitioners for a limited period, so that they could continue their practice till verification of their claims. But that order does not provide protection if the documents are found to be fake or bogus.

24. On behalf of the petitioners who admittedly do not possess any recognised medical qualifications but who were practicing in the Rural area by virtue of provisions of Section 37 have made a grievance that they are being harassed by the State Government and now by the Amendment Act, 2005, section 37 itself is deleted and thus, their vested rights are taken away. Section 37, as it stood prior to the amendment, reads as follows:-

"Section 37-Notwithstanding anything contained

> *in this Chapter, a person may practise medicine in any rural area.-*
>
> *"37(i) If he has commenced practice in any village in the said area prior to a date on which a practitioner registered under the Bombay Medical Act, 1912, or under the Bombay Medical practitioners' Act, 1938 (or any law corresponding thereto) or under the Bombay Homoeopathic Act, 1951 (or other law in relation to the qualifications and registration of Homoeopathic or Biochemic practitioners for the time being in force, has commenced, and is in regular practice of medicine in that village, and"*
>
> *(ii) So long as he continues to practice in that village as his principal place of practice"*

It is true that in far off trible or rural areas where no sufficient medical facilities was available under section 37, the person who had some experience in medical practice was allowed to practice in the villages provided before they commence the practice in the particular village, there was no registered medical practitioner under the Bombay Medical Act, 1952, the Bombay Medical Practitioners Act, 1938 or the Bombay Homeopathic Act, 1951. It is contended that by deleting this section from the Act, not only these petitioners are deprived of their right of practice and earning of livelihood, but large number of villagers are also deprived of medical facilities in such villages and therefore, the Amendment Act, 2005 is ultravires and bad

in law. We do not find any substance in this contention also. According to the State, it has become necessary to delete this section because it was being misused by the quacks and it is also inconsistent with the specific provisions of section 17 of the Central Act. Because of the inconsistency, the Maharashtra Act was repugnant to the Central Legislation to that extent. Therefore, section 37 itself was bad in law and unconstitutional. It is also contended that it is a matter of policy decision of the State Government and this Court cannot hold the amendment as invalid merely because the rights of certain unqualified persons to practice are taken away. Reliance in this regard is placed on the **Delhi Pradesh Registered Medical Practitioners V. Director of Health, Delhi Admn. Services and others,((1997) 11 SCC 687).** In para 6, Supreme Court observed as follows:-

> *"We may indicate here that it has been submitted by Mr. Mehta and also by Ms Sona Khan appearing in the appeal arising out of Special Leave Petition No. 6167 of 1993 that proper consideration had not been given to the standard of education imparted by the said Hindi Sahitya Sammelan, Prayag and expertise acquired by the holders of the aforesaid degrees awarded by the said institution. In any event, when proper medical facilities have not been made available to a large number of poorer sections of the society, the ban imposed on the practitioners like the writ petitioners rendering useful*

service to the needy and poor people was wholly unjustified. It is not necessary for this Court to consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. We may also indicate here that what constitutes proper education and requisite expertise for a practitioner in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject."

25. It is further contended on behalf of the petitioners that in spite of deleting section 37, the State Government has retained the power to exempt any class of persons or area from the application of section 33 which prohibits medical practice by a person not registered by not deleting proviso to Section 33(1). It is contended that this is arbitrary and discriminatory. Section 33 prohibits medical practice by the persons who are not registered under the Maharashtra Act or under Bombay Homeopathic and Biochemic Practitioners Act or under Indian Medical Council Act 1956. However, under the proviso to sub-section (1) the State Government may by notification in the Official Gazette direct that subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed by rules, the provisions of this section shall not apply to any class of persons, or to area, as may be specified in

such notification. There may be contingencies and circumstances when the Government may be required to invoke such power for the welfare of the people of the particular area. Merely because such powers are reserved by the State Government it cannot be said that it has acted arbitrarily or made any discrimination. Naturally when such power would be invoked, the action of the State Government may be challenged, if it is found that it was arbitrary or discriminatory. Merely because this power is retained and section 37 is deleted it cannot be held that the action of the State is arbitrary or illegal.

26. The group of petitioners, who claim to hold degree/diploma in Electropathy/ Homeo Electropathy, has challenged the action of the Government for prosecution or apprehended prosecution against them. At the out set it may be stated that Section 2 sub-section (2) of the Maharashtra Act, reads as follows:

> *"(2) For the purpose of Chapter VI, a person shall be deemed to practise any system of medicine who holds himself out as being able to diagnose, treat, operate or prescribe medicine or other remedy or to give medicine for any ailment, disease, injury, pain deformity or physical condition or who, by any advertisement,*

demonstration, exhibition or teaching offers or undertakes, by any means or method whatsoever to diagnose, treat operate prescribe, medicine or other remedy or to give medicine for any ailment, disease, injury, pain, deformity or physical condition."

Provided that, a person who-

(i) mechanically fits or sells lenses, artificial eyes, limbs or other apparatus or appliances; or

(ii) is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eye-glasses or lense; or

(iii) practice physio-therapy or electro-therapy or chiripody or naturopathy or hydropathy or yogic healing, or

(iv) without personal gain furnishes medical treatment or does domestic administration of family remedies; or

(v) being registered under the Dentists Act, 1948, limits his practice to the art of dentistry; or

(vi) being a nurse, midwife or health visitor registered or enlisted under the Bombay Nurses, Midwifes and Health Visitors Act, 1954, or any other corresponding law for the time being in force in the State or a Dai attends on a case of labour,

shall not be deemed to practise medicine.

Explanation.-In this sub-section-

(i) "advertisement" includes any word, letter, notice, circular, picture illustration model, sign, playcard, board or other document and any announcement made orally or by any means of producing or transmitting light, sound smoke or other audible or visible representation; and

> *(ii) "physio-threapy" means treatment of any ailment, disease, injury, pain, deformity or physical condition, by massage or other physical means, but does not include bone setting."*

From this, it is clear that a person shall be deemed to practice any system of medicines who holds himself out as being able to diagonise, treat, operate or prescribe medicine or other remedy to give medicine for any ailment, disease, injury deformity or physical condition or who claims or indicates to diagnose, treat, operate or prescribe medicines or other remedy etc. For all these purposes unless a person is a registered medical practitioner, he shall not be allowed to practice in view of section 33 which is part of Chapter VI. However, under the proviso to sub-section 2 there is a category of the persons who shall not be deemed to practice medicines and therefore, they are neither treated as medical practitioners nor their practice as such is prohibited under Section 33. From the proviso quoted above, it is clear that a person, who practices Physiotherapy or Electropathy or chiripody or naturopathy or hydropathy or yogic healing shall not be deemed to practice medicine. As long as the person who claims to hold degrees or diplomas in Electrotherapy or

Electropathy and he practices as such he cannot come within the purview of section 33. However, if such person claim to practice medicine for the purpose of diagnosis, treatment etc. he will come within the definition of Medical Practitioner and will be required to be registered under section 33, failing which he is liable for prosecution by the State Government.

27 It may be noted that Section 25 of the Maharashtra Act, provides that a registered medical practitioner shall use the full title as "Registered Medical practitioner" after his name for the purpose that the patients or the people at large should know that he is a registered medical practitioner allowed to practice medicines. He cannot adopt the abbreviation "RPM" which may indicate to be some degree or diploma or a medical qualification. Section 36 of the Maharashtra Act reads as follows:-

> *"Section 36 (1) No person shall add to his name any title, description, letters of abbreviations which imply that he holds a degree, diploma, licence or certificate or any other like award as his qualification to practise any system of medicine unless;-*
>
> *(a) he actually holds such degree, diploma, licence or certificate or any other like award;*

and

(b) such degree, diploma, licence or certificate or any other like award-

(i) is recognised by any law for the time being in force in India or in part thereof, or

(ii) has been conferred, granted or issued by a body or institution referred to in sub-section (1) of section 35, or

(iii) has been recognised by the Medical Council of India, or

(iv) has been recognised by the Central Council of Indian Medicine.

(2) Any person, who contravenes the provisions of sub-section (1) shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than one thousand rupees but which may extend to five thousand rupees; and when the contravention is continuing one, with further fine which may extend to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention."

From this it is clear that nobody is allowed to use any title, description, letters or abbreviations which would indicate that he holds a degree or diploma, licence or certificate as his qualifications to practice any system of medicines unless he holds such degree, diploma, licence, certificate or award which is recognised by law or has been conferred, granted or issued by body or institution like university, Council or authority or board of examiners under this Act, or Medical Council of

India or Central Council of Indian medicines. Naturally, the Electropath, who claims to hold degree or diploma in Electropathy given by some institution is not supposed to be medical practitioners and therefore, he cannot use any word like Doctors, Vaidya, Hakim, RMP etc. which may mislead the people to take him as medical practitioner. When he contravenes section 36, he may come in trouble and under section 36(2) he may be prosecuted and punished. Similarly when they are not the medical practitioners and they start medical practice in spite of the provisions of section 33, they may be prosecuted and punished under section 32(2). It may be noted that Writ Petition No. 938/1992 was filed on behalf of the persons who did not hold any medical qualification or were not registered medical practitioners, challenging the threat to prosecute them. The said petition came to be dismissed by a Division Bench of this Court by the order dated 25th March, 1992 making the following observations.

> *"Mr. Morje desperately submitted that in case the petitioner is not permitted to practice and is prosecuted for practising medicine without authority then that would take away the source of livelihood of the petitioner and consequently the fundamental rights under article 21 would*

> *stand violated. The submission is only required to be stated to be rejected. It is not open for the petitioner to destroy the health of poor citizens in rural Maharasthra by resort to the fundamental rights under Article 21 of the Constitution. In case such an argument is accepted then it would make mockery of the fundamental rights. In our judgment the petitioner has no case whatsoever and we decline to entertain the petition under Article 226 of the Constitution of India."*

28. It appears that some of the petitioners claimed to hold degree or diploma in Homeo-Electropathy which indicates that besides the Electropathy, they also claim to have training in Homeopathy and thereby they claim to have a right to prescribe or dispense medicines. Once they claim that they can diagonise, or treat or prescribe medicine, they can come within the definition of medical practice which necessarily requires registration. Such practice without registration is prohibited and punishable under section 33. As such persons do not hold recognised medical qualification under the Central Act, they are also not entitled to be registered as medical practitioners. As long as their practice is limited to the exception covered under the proviso to sub- section (2) of section 2 of the State Act, and they do not use any title, abbreviation etc. which would indicate that they are medical

practitioners, they need not have any apprehension of prosecution. However, once they claim to medical practitioners or pose themselves to be medical practitioners and mislead the people, they will be liable to be prosecuted and punished as per law. In view of this, we find that they do not require any protection from this Court. Only a clarification about their status will be sufficient.

29. It is a general argument on behalf of all the petitioners by putting unreasonable restrictions etc. on their practice their fundamental rights under Article 19(1) (g) of the Constitution to practice any profession is violated. This argument has no force in view of Article 19 clause (6) which clearly provides that in the interest of general public reasonable restrictions on the exercise of the right under Article 19(1) (g) may be imposed and particularly nothing shall prevent the state from making any law relating to the professionals or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. Prescribing necessary qualification for medical practice is necessary in the interest of general public. At the same time registration of medical

practitioners is also necessary to stop or prevent illegal practice and to save the public at large from quacks or unqualified persons, who was cause danger to their lives. Therefore the restrictions imposed by the Central Act as well as State Act are justified and are protected under Article 19(6) of the Constitution. Having carefully considered the relevant provisions in the Central Act as well as Maharashtra Act, we do not find any of the provisions suffering from any illegality, repugnancy or violation of any constitutional provisions.

30. it is also argued that in a group of petition being **writ petition No.2300/2001 Vaidya Baliram Parshuram Thakur V/s State of Maharashtra and other**s by an order dated 23/7/2001 this Court had directed that the certificates, documents of the petitioners be examined to find out whether they are genuine or not and merely on the basis of suspicion should not be stopped from practicing. It is pointed out by the State that many of the petitioners did not turn up with necessary documents and in some cases the documents were found to be fake. Any way, that direction does not provide the permanent protection to the petitioner from practicing

without holding necessary qualifications and/or without necessary registration under the law.

31. For the aforesaid reasons, we find no merit in the present petitions. Therefore, all the petitions stand dismissed. However, it is made clear that as far as the petitioners, who claim to hold degree or diploma in Electropathy or Homeo-Electropathy, may practice in Electropathy or Electrothereapy without registration as medical practitioners in view of proviso to sub- section (2) section 2 of the Maharashtra Medical Practitioners Act. At the same time it is also made clear that they will not be entitled to practice as or claim to be medical practitioners, doctors etc. nor they are entitled to use any title, like Dr. or any abbreviations prefixing or suffixing their names which may indicate that they are Doctors or Medical Practitioners. If they violate the provisions of law, necessary action including prosecution may follow as per the provisions of Maharashtra Medical Practitioners Act, 1961.

32 Rule discharged accordingly.

33. Oral application has been submitted by Mr. Apte the learned Counsel for some of the petitioners for continuing the stay granted by this Court earlier. This has been opposed by Mrs. Thakur, the learned AGP. Having regards to the reasoning set out by us and the law laid down by the Apex Court, we do not deem it appropriate to entertain this request for continuing the stay and more particularly in the larger interest of the society and, therefore, the oral application is rejected.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**